

TRANSMITTAL OF APPEAL BRIEF

Docket No.
SOA-0394

In re Application of: Ellen Glassman et al.

Application No.
10/803,560-Conf. #5967

Filing Date
March 17, 2004

Examiner
J. H. Yoo

Group Art Unit
3714

Invention: METHODS AND APPARTUSES FOR DISPLAYING INTERACTIVE CONTENT
THROUGH A DEVICE

TO THE COMMISSIONER OF PATENTS:

Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal
filed: April 25, 2007

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 40,290

Dated: June 21, 2007

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Docket No.: SOA-0394
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

Ellen Glassman, et al.

Application No.: 10/803,560

Confirmation No.: 5967

Filed: March 17, 2004

Art Unit: 3714

For: METHODS AND APPARATUSES FOR
DISPLAYING INTERACTIVE CONTENT
THROUGH A DEVICE

Examiner: Jasson H. Yoo

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is an Appeal Brief under 37 C.F.R. § 41.37 appealing the final decision of the Examiner dated December 27, 2006. This Brief is also in furtherance of the Notice of Appeal previously filed on April 25, 2007.

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III. STATUS OF CLAIMS

A. Current Status of Claims

A complete listing of the claims with corresponding status is provided as follows:

Claim 1. (Canceled).

Claim 2. (Canceled).

Claim 3. (Canceled).

Claim 4. (Canceled).

Claim 5. (Canceled).

Claim 6. (Canceled).

Claim 7. (Canceled).

Claim 8. (Canceled).

Claim 9. (Canceled).

Claim 10. (Canceled).

Claim 11. (Canceled).

Claim 12. (Canceled).

Claim 13. (Canceled).

Claim 14. (Canceled).

Claim 15. (Canceled).

Claim 16. (Canceled).

Claim 17. (Canceled).

Claim 18. (Canceled).

Claim 19. (Canceled).

Claim 20. (Canceled).

Claim 21. (Canceled).

Claim 22. (Canceled).

Claim 23. (Canceled).

Claim 24. (Canceled).

Claim 25. (Canceled).

Claim 26. (Canceled).

Claim 27. (Canceled).

Claim 28. (Rejected).

Claim 29. (Rejected).

Claim 30. (Rejected).

Claim 31. (Rejected).

Claim 32. (Rejected).

Claim 33. (Rejected).

Claim 34. (Rejected).

Claim 35. (Rejected).

Claim 36. (Rejected).

Claim 37. (Rejected).

Claim 38. (Rejected).

Claim 39. (Rejected).

This brief contains items under the following headings as required by 37 C.F.R. § 41.37 and M.P.E.P. § 1206:

I.	Real Party In Interest
II	Related Appeals and Interferences
III.	Status of Claims
IV.	Status of Amendments
V.	Summary of Claimed Subject Matter
VI.	Grounds of Rejection to be Reviewed on Appeal
VII.	Argument
VIII.	Claims
IX.	Evidence
X.	Related Proceedings
Appendix A	Claims

I. REAL PARTY IN INTEREST

The real party in interest for this appeal is Sony Corporation (Tokyo, JP) and Sony Electronics, Inc. (Park Ridge, NJ). An assignment of all rights in the present application in this regard was executed by the inventors and recorded by the United States Patent and Trademark Office at Reel 016911, Frame 0314.

II. RELATED APPEALS, INTERFERENCES, AND JUDICIAL PROCEEDINGS

There are no other appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

Action was mailed on December 27, 2006. No further amendments were made and a Notice of Appeal was filed by Appellant on April 25, 2007.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The following description is for illustrative purposes and is not intended to limit the scope of the invention.

Certain embodiments of the present invention relate to the provision of interactive content through portable devices. For example, first and second portable devices may respectively have associated first and second characters with different status levels. A player with the second portable device may bring it within proximity of a player holding the first portable device. The portable devices detect the proximity of each other and then can display an animated graphical display of a contest between the first and second characters. This animated graphical display of the contest is displayed as a synchronized continuous event on both the first portable device and the second portable device, with an outcome of the contest being determined based upon the first and second status levels. In this fashion, both players may independently engage with their own portable device to concurrently view the animated graphical display involving a contest between the respective unique characters of the players that are associated with the devices.

Independent claim 28 recites: [a] method for displaying synchronized contests involving characters associated with portable devices (*e.g.*, FIG. 4, element 110; FIG. 6, elements 610, 620, 630; FIG. 8; specification p. 12, line 19 through p. 14, line 2; p. 17, line 19 through p. 18, line 13; p. 23, line 17 through p. 26, line 16; FIG. 11), the method comprising:

associating with a first portable device a first character having a first status level (*e.g.*, FIG. 5; specification p. 16, line 8 through p. 17, line 18);

detecting a second portable device within a proximity of the first portable device, a second character having a second status level being associated with the second portable device (*e.g.*, FIG. 8; specification p. 24, lines 11-13);

Claim 40. (Rejected).

Claim 41. (Rejected).

Claim 42. (Rejected).

Claim 43. (Rejected).

Claim 44. (Rejected).

Claim 45. (Canceled).

Claim 46. (Canceled).

Claim 47. (Canceled).

Claim 48. (Canceled).

Claim 49. (Canceled).

Claim 50. (Canceled).

Claim 51. (Canceled).

Claim 52. (Canceled).

Claim 53. (Canceled).

Claim 54. (Canceled).

B. Claims On Appeal

Appellant hereby appeals the final rejection of claims 28-44.

IV. STATUS OF AMENDMENTS

Following a Non-Final Office Action dated July 12, 2006, a fully responsive Amendment was made on October 10, 2006. Responsive to this Amendment, a Final Office

comparing the first status level with the second status level (*e.g.*, FIG. 8; specification p. 23, lines 16-19); and

displaying on the first portable device an animated graphical display of a contest between the first and second characters, wherein the animated graphical display of the contest is displayed as a synchronized single continuous event on both the first portable device and the second portable device, with an outcome of the contest being determined based upon the comparison of the first and second status levels (*e.g.*, FIG. 8; specification p. 24, line 16 through p. 25, line 22; specification p. 26, lines 1-10; FIG. 11; specification p. 27, line 16 through p. 28, line 6).

Independent claim 34 recites: [a]n apparatus for displaying synchronized contests involving characters associated with portable devices (*e.g.*, FIG. 4, element 110; FIG. 6, elements 610, 620, 630; FIG. 8; specification p. 12, line 19 through p. 14, line 2; p. 17, line 19 through p. 18, line 13; p. 23, line 17 through p. 26, line 16; FIG. 11), the apparatus comprising:

means for associating with a first portable device a first character having a first status level (*e.g.*, FIG. 4, element 430; FIG. 5; specification p. 16, line 8 through p. 17, line 18);

means for detecting a second portable device within a proximity of the first portable device, a second character having a second status level being associated with the second portable device (*e.g.*, FIG. 4, element 410; FIG. 8; specification p. 24, lines 11-13);

means for comparing the first status level with the second status level (*e.g.*, FIG. 4, element 460; FIG. 8; specification p. 23, lines 16-19); and

means for displaying on the first portable device an animated graphical display of a contest between the first and second characters, wherein the animated graphical display of the contest is displayed as a synchronized single continuous event on both the first portable device and the second portable device, with an outcome of the contest being determined based upon the

comparison of the first and second status levels (*e.g.*, FIG. 11, element 360; FIG. 8; specification p. 24, line 16 through p. 25, line 22; specification p. 26, lines 1-10; FIG. 11; specification p. 27, line 16 through p. 28, line 6).

Independent claim 40 recites: [a] portable device for displaying synchronized contests involving characters associated with portable devices (*e.g.*, FIG. 4, element 110; FIG. 6, elements 610, 620, 630; FIG. 8; specification p. 12, line 19 through p. 14, line 2; p. 17, line 19 through p. 18, line 13; p. 23, line 17 through p. 26, line 16; FIG. 11), the portable device comprising:

a storage module, which stores an association of a first character having a first status level for the portable device (*e.g.*, FIG. 4, element 430; FIG. 5; specification p. 16, line 8 through p. 17, line 18);

a detection module, which detects a second portable device within a proximity of the portable device, a second character having a second status level being associated with the second portable device (*e.g.*, FIG. 4, element 410; FIG. 8; specification p. 24, lines 11-13);

a hierarchy module, which compares the first status level with the second status level (*e.g.*, FIG. 4, element 460; FIG. 8; specification p. 23, lines 16-19); and

a display module, which displays on the portable device an animated graphical display of a contest between the first and second characters, wherein the animated graphical display of the contest is displayed as a synchronized single continuous event on both the first portable device and the second portable device, with an outcome of the contest being determined based upon the comparison of the first and second status levels (*e.g.*, FIG. 3, element 360; FIG. 11, element 360; FIG. 8; specification p. 24, line 16 through p. 25, line 22; specification p. 26, lines 1-10; FIG. 11; specification p. 27, line 16 through p. 28, line 6).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The issues presented for consideration in this appeal are as follows:

Whether the Examiner erred in rejecting claims 28-44 under 35 U.S.C. § 102(e) as being anticipated over U.S. Pat. No. 6,508,706 to Sitrick et al. (“Sitrick”).

These issues are discussed in the following section.

VII. ARGUMENT

In the Final Office Action of December 27, 2006, the Examiner erred in rejecting claims 28-44 under 35 U.S.C. § 102(e) as being anticipated by U.S. Pat. No. 6,508,706 to Sitrick et al. (“Sitrick”).

VII.A. Grouping of claims: Claims 28-44 are currently pending in the application. For the purpose of this Appeal, Claims 28-44 stand or fall together.

VII.B The Examiner erred in rejecting claims 28-44 under 35 U.S.C. § 102(e) as being anticipated by Sitrick:

Independent claim 28 recites: *[a] method for displaying synchronized contests involving characters associated with portable devices, the method comprising:*
associating with a first portable device a first character having a first status level;
detecting a second portable device within a proximity of the first portable device, a second character having a second status level being associated with the second portable device;
comparing the first status level with the second status level; and
displaying on the first portable device an animated graphical display of a contest between the first and second characters, wherein the animated graphical display of the contest is displayed as a synchronized single continuous event on both the

first portable device and the second portable device, with an outcome of the contest being determined based upon the comparison of the first and second status levels.

These claimed features are neither disclosed nor suggested by Sitrick. Sitrick discloses an electronic trading card (ETC) that provides feedback to a user relating to group social behavior through implementation of interaction rules. (Sitrick, Abstract). A “persona” corresponding to an ETC device may have numerous attributes. (Sitrick, 7:65-8:57). Various interactions, such as where one ETC asks for or provides information to another, are described. (Sitrick, 8:58-9:27). Transfer of possessions pursuant to such interaction is governed by the rules. (Sitrick, 9:28-35).

The Examiner alleges the Sitrick discloses “*displaying on the first portable device an animated graphical display of a contest between the first and second characters, wherein the animated graphical display of the contest is displayed as a synchronized single continuous event on both the first portable device and the second portable device,*” as claimed by Appellant, with references to various passages in Sitrick cited in support of the conclusion that the reference discloses such features. (Office Action dated 12/27/06, at p. 5). However, none of these passages, and nothing in the remainder of the reference discloses or suggests these claimed features.

The Examiner initially refers to Sitrick at 8:7-13 and 9:15-56 in support of the conclusion that Sitrick discloses an animated graphical display involving a contest. (Office Action dated 12/27/06, at p. 5, lines 3-5). The first passage merely describes how the ETC may have variables that may be modified at manufacture or as a result of interaction with other devices and experiences that result from usage. There is no mention whatsoever of an animated graphical display involving a contest.

Column 9, lines 15-56 of Sitrick covers various points. An initial portion appears to state that interaction (between ETCs) may result in transfers of “Possessions”, and that such transfers might be based upon rankings in certain categories (*e.g.*, Aggressiveness, Sexuality, Appearance). (Sitrick, at 9:15-26). Then, specific examples of Possessions that are transferable are described, namely Wealth, Wisdom, Health, Rank, and Sex. (Sitrick, at 9:27-45). Finally, it

is noted that the active game may be divided into a discovery phase, involving learning about neighbors, and an active play phase, involving requests for more information and requests and demands for possessions. (Sitrick, at 9:46-56). The cited passage thus describes details with regard to how possessions might be transferred. There is absolutely no description of an animated graphical display involving a contest between characters, etc., as claimed.

Sitrick repeatedly describes group social behavior and corresponding interactions between personas. Any reference to the results of such interactions appears to address the maintenance of certain possessions. For example, wealth, wisdom, health, rank and sex are said to be transferred (*e.g.*, given, or taken), but there is no disclosure or suggestion of a battle or other type of animated graphical display involving a contest between characters. There is no apparent description of a synchronized contest generally, and certainly no disclosure or suggestion of providing such a synchronized display as a single continuous event on both the first and second portable devices.

The next passage cited by the Examiner states that:

“[t]he transfer can alternatively result in a change to the value of the respective variables of both devices in the transfer, or only result in a change to the value of the respective variable in only one of the devices in the transfer. The transfer of the value for the respective variable is governed by predefined rules associated with the respective variable. Each device can communicate with at least one of the players and at least another one of the devices. The device communicates at any given time with only one of the other ones of the devices. Each device can provide an active game with an associated display. The active game is divided into phases comprising a discovery phase and an active play phase.”

(Sitrick, at 4:46-58).

This passage merely reiterates what is noted above regarding Sitrick. That is, the interaction among personas represented in respective ETC devices results in a comparison and then some kind of transfer. In a discovery phase, information about the personas is discovered, and in an active play phase the transfer is accommodated. There is no mention of an animated graphical display of a contest, particularly one that is shown as a synchronized single continuous event on both the first portable device and the second portable device, as claimed by Appellant. The Sitrick reference merely states that the device can provide an active game, meaning the game is underway, with an associated display, meaning that some kind of display is made in

association with the game. There is no mention of an animated graphical display of a contest, or of a synchronized single continuous event in two devices, as claimed by Appellant.

Finally, the Examiner cites column 6, lines 55-62 and column 11, lines 7-22 as alleged further support for the disclosure of these claimed features. (Office Action dated 12/27/06, at p. 5, lines 6-10). However, these passages also fail to disclose the claimed features of an *“animated graphical display of a contest between the first and second characters, wherein the animated graphical display of the contest is displayed as a synchronized single continuous event on both the first portable device and the second portable device...”* in the cited passages. Column 6, lines 55-62 mentions that “interaction may be further enhanced by adding mechanical motion or visual display, allowing, for example, eye motion, facial expression, or hand gestures.” (Sitrick, at 6:55-62). This passage appears to describe interaction between a user and the ETC. There is no mention of “eye motion, facial expression, or hand gestures” being between first and second characters from separate portable devices, and absolutely no detail or any kind of discussion of such interaction occurring. In any event, even presuming that such is the case (which would be inappropriate conjecture, and not disclosed in the reference), there would still be not disclosure in this passage of an animated graphical display of a contest as a synchronized single continuous event as claimed.

Column 11, lines 7-22 appears to describe how changes in a “persona” and a “world view” may be executed, but again there is no mention of any kind regarding an *“animated graphical display of a contest between the first and second characters, wherein the animated graphical display of the contest is displayed as a synchronized single continuous event on both the first portable device and the second portable device...”* Thus each of the passages cited by the Examiner fails to disclose the features recited in Appellant’s claim.

Indeed, throughout the Sitrick reference, there is no mention of a battle or other contest involving an animated graphical display between first and second characters, as a synchronized single continuous event or otherwise. Instead, the “game” in the Sitrick reference is clearly a transfer of possessions that occurs based upon various rules and corresponding variables. This is quite clear based upon a review of the specific passages cited by the Examiner, or any objective reading of the reference. By way of example, FIGs. 6A-C and the corresponding description in Sitrick clearly describe the type of interaction that takes place between ETCs in the Sitrick reference. There is quite a bit of detail with regard to this type of

interaction. By contrast, there is absolutely no description of an animated graphical display of a contest between characters as claimed. *At best*, there is a passing reference suggesting that a character in the ETC may move, without any description of the context in which such motion would occur. Thus, even in the best light, the reference in no way discloses the specifics of an animated graphical display of a contest between characters as a synchronized single continuous event on both devices, as claimed by Appellant.

Accordingly, Sitrick clearly fails to disclose or suggest features recited in independent claim 28. For reasons similar to those provided regarding claim 28, independent claims 34 and 40 are also neither disclosed nor suggested by Sitrick. Claims 29-33, 35-39 and 41-44 respectively depend from independent claims 28, 34 and 40, and are thus distinct from Sitrick for their incorporation of the features recited therein, as well as for their separately recited, patentably distinct features.

For the foregoing reasons, Appellant respectfully requests reversal of the Examiner's rejection of claims 28-44 under 35 U.S.C. § 102(e) as being anticipated by Sitrick.

VIII. CLAIMS

A copy of the claims involved in the present appeal is attached hereto as Appendix A.

IX. EVIDENCE

No evidence pursuant to §§ 1.130, 1.131, or 1.132, or additional evidence entered by or relied upon by the Examiner is being submitted.

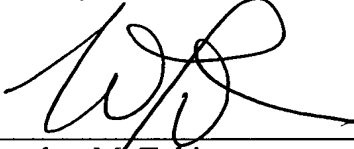
X. RELATED PROCEEDINGS

No related proceedings are referenced in section II above, or copies of decisions in related proceedings are not provided, hence no Appendix is included.

Appellant believes no additional fee is due with this Brief. However, if a fee is due, please charge our Deposit Account No. 18-0013, from which the undersigned is authorized to draw, under Order No. SOA-0394 .

Dated: *June 21, 2007*

Respectfully submitted,



By

Christopher M. Tobin

Registration No.: 40,290

RADER, FISHMAN & GRAUER PLLC

Correspondence Customer Number: 23353

Attorney for Appellant

APPENDIX A

1. (Canceled).
2. (Canceled).
3. (Canceled).
4. (Canceled).
5. (Canceled).
6. (Canceled).
7. (Canceled).
8. (Canceled).
9. (Canceled).
10. (Canceled).
11. (Canceled).
12. (Canceled).
13. (Canceled).
14. (Canceled).
15. (Canceled).

16. (Canceled).

17. (Canceled).

18. (Canceled).

19. (Canceled).

20. (Canceled).

21. (Canceled).

22. (Canceled).

23. (Canceled).

24. (Canceled).

25. (Canceled).

26. (Canceled).

27. (Canceled).

28. (Previously Presented) A method for displaying synchronized contests involving characters associated with portable devices, the method comprising:

associating with a first portable device a first character having a first status level;

detecting a second portable device within a proximity of the first portable device, a

second character having a second status level being associated with the second portable device;

comparing the first status level with the second status level; and

displaying on the first portable device an animated graphical display of a contest between the first and second characters, wherein the animated graphical display of the contest is displayed as a synchronized single continuous event on both the first portable device and the second portable device, with an outcome of the contest being determined based upon the comparison of the first and second status levels.

29. (Previously Presented) The method of claim 28, wherein the synchronized graphical display is separately displayable on the second portable device while it is being displayed on the first portable device.

30. (Previously Presented) The method of claim 28, wherein a winner of the contest is shown in the synchronized graphical display, the winner being based upon the comparison of the first and second status levels.

31. (Previously Presented) The method of claim 28, wherein the first status level is adjusted based upon the outcome of the contest.

32. (Previously Presented) The method of claim 28, wherein a hierarchy module establishes the first status level.

33. (Previously Presented) The method of claim 28, wherein a wireless tag module respectively transmits and receives profile information corresponding to the first and second devices, the profile information accommodating association of the first and second characters with the first and second devices.

34. (Previously Presented) An apparatus for displaying synchronized contests involving characters associated with portable devices, the apparatus comprising:

means for associating with a first portable device a first character having a first status level;

means for detecting a second portable device within a proximity of the first portable device, a second character having a second status level being associated with the second portable device;

means for comparing the first status level with the second status level; and

means for displaying on the first portable device an animated graphical display of a contest between the first and second characters, wherein the animated graphical display of the contest is displayed as a synchronized single continuous event on both the first portable device and the second portable device, with an outcome of the contest being determined based upon the comparison of the first and second status levels.

35. (Previously Presented) The apparatus of claim 34, wherein the synchronized graphical display is separately displayable on the second portable device while it is being displayed on the first portable device.

36. (Previously Presented) The apparatus of claim 34, wherein a winner of the contest is shown in the synchronized graphical display, the winner being based upon the comparison of the first and second status levels.

37. (Previously Presented) The apparatus of claim 34, wherein the first status level is adjusted based upon the outcome of the contest.

38. (Previously Presented) The apparatus of claim 34, wherein a hierarchy module establishes the first status level.

39. (Previously Presented) The apparatus of claim 34, wherein a wireless tag module respectively transmits and receives profile information corresponding to the first and second devices, the profile information accommodating association of the first and second characters with the first and second devices.

40. (Previously Presented) A portable device for displaying synchronized contests involving characters associated with portable devices, the portable device comprising:

a storage module, which stores an association of a first character having a first status level for the portable device;

a detection module, which detects a second portable device within a proximity of the portable device, a second character having a second status level being associated with the second portable device;

a hierarchy module, which compares the first status level with the second status level; and

a display module, which displays on the portable device an animated graphical display of a contest between the first and second characters, wherein the animated graphical display of the contest is displayed as a synchronized single continuous event on both the first portable device and the second portable device, with an outcome of the contest being determined based upon the comparison of the first and second status levels.

41. (Previously Presented) The portable device of claim 40, wherein the synchronized graphical display is separately displayable on the second portable device while it is being displayed on the portable device.

42. (Previously Presented) The portable device of claim 40, wherein a winner of the contest is shown in the synchronized graphical display, the winner being based upon the comparison of the first and second status levels.

43. (Previously Presented) The portable device of claim 40, wherein the first status level is adjusted based upon the outcome of the contest.

44. (Previously Presented) The portable device of claim 40, further comprising:
a wireless tag module, which respectively transmits and receives a first profile
information and a second profile information corresponding to the portable device
and the second portable device, the first profile information and second profile
information respectively accommodating association of the first and second
characters with the portable device and the second portable device.

45. (Canceled).

46. (Canceled).

47. (Canceled).

48. (Canceled).

49. (Canceled).

50. (Canceled).

51. (Canceled).

52. (Canceled).

53. (Canceled).

54. (Canceled).